

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**FOR THE MINNESOTA ENVIRONMENTAL QUALITY BOARD**

In the Matter of Minnesota Power  
Application for Exemption for High Voltage      **ORDER ON PETITIONS TO INTERVENE**  
Transmission Lines and Associated  
Substation

On September 27, 1999, Minnesota Power filed an application for exemption from state requirements for a construction permit for high voltage transmission lines. The project is 12 miles long, extending from the Arrowhead Substation west of Duluth, Minnesota on an existing right of way alignment south and east to a point on the Wisconsin state boundary coincident with the St. Louis River near Gary-New Duluth, Minnesota. The proposed new facility is the Minnesota portion of a 250-mile 345,000-volt line proposed to run from Duluth to near Wausau, Wisconsin.

On December 17, 1999, the Minnesota Environmental Quality Board (MEQB) issued a Notice of Public Hearing setting forth the dates, times and places for the public hearings, a description of the issues to be considered and other information necessary to meet the hearing notice requirements of the Office of Administrative Hearings (OAH). The notice explained that the hearings would be presided over by an Administrative Law Judge (ALJ) from the OAH and that the hearing would be conducted in accordance with the OAH Rules for the MEQB Power Plant Siting Process.

The Notice also explained the two different ways in which persons may participate in the hearings: they may participate as interested persons, or they may participate as parties. To participate as a party, the notice explained the requirements for a Petition for Intervention and set a deadline of January 6, 2000 to file a Petition with the ALJ.

A prehearing conference was held on December 22, 1999 at the Midway Town Hall in Duluth. During that prehearing conference, which was attended by several potential intervenors, the participants discussed in more detail the duties and obligations of a party if intervention status were granted.

On January 4, 2000 the ALJ issued the First Prehearing Order in this matter further explaining that persons or groups desiring to participate as a party must file a Petition for Intervention by January 6, 2000 consistent with Minn. Rules Pt. 1405.0900 and 1400.6200. The Order also explained that any party may object to a petition for

intervention by filing a written objection with the ALJ within seven days of service of a petition.

On January 6, 2000 the ALJ received requests from Lake Superior Greens, Chippewa Valley Bank, Exeland Rod and Gun Club, Exeland Business Owners Club and the Village of Exeland to extend the filing deadline for petitions to intervene. The ALJ granted extensions to the requesting parties until January 11, 2000. The requesting parties were advised that their petitions must be "received in hand" by January 11<sup>th</sup> to be considered timely.

By January 6, 2000 (January 11, 2000 for those who requested an extension of the filing deadline), the ALJ received 19 timely Petitions to Intervene, and one Petition that was 5 days late (January 11, 2000) from Wisconsin Representative Reynolds. The following Petitions for Intervention were received:

1. Minnesota Department of Commerce
2. Clean Water Action Alliance (CWAA)
3. North American Water Office (NAWO)
4. Save Our Unique Lands, Inc. (SOUL)
5. SOUL of Lake Superior
6. SOUL of Catawba-Keenan
7. SOUL of Rusk County
8. Pimicikamak Cree Nation (PCN)
9. Concerned Minnesota Residents with Wisconsin Land Ownership (CMRWWLO)
10. World Organization for Landowners Freedom (WOLF)
11. Rusk County Citizens Action Group (
12. Citizens' Utility Board of Wisconsin (CUB)
13. Dairyland Power Cooperative
14. Public Service Commission of Wisconsin
15. Lake Superior Greens
16. Chippewa Valley Bank
17. Exeland Rod and Gun Club
18. Exeland Business Owners Club
19. Village of Exeland
20. Wisconsin State Representative Mary Reynolds. (Filed 1/11/00)

On January 14, 2000, Minnesota Power filed its Objections to Petitions to Intervene, including the one untimely petition. Minnesota Power has objected to all but two of the petitions--the Minnesota Department of Commerce and the Wisconsin Public Service Commission. It has not specifically responded to the petition of Dairyland Power Cooperative, although it stated general objections to interventions raising Wisconsin issues.

NAWO, PCN and CMRWWLO, SOUL, SOUL of Rusk County, WOLF and Dairyland Power Cooperative filed replies to Minnesota Power's objections. The last of which was received on January 20, 2000 at which time the record herein closed. On January 18, 2000, SOUL of Rusk County withdrew its Petition for Intervention and is no longer seeking full party status.

Based upon the record herein and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

### **ORDER**

1. The Petition for Intervention of the Minnesota Department of Commerce is GRANTED.
2. The Petition for Intervention of Clean Water Action Alliance is GRANTED.
3. The Petition for Intervention of North American Water Office is GRANTED.
4. The Petition for Intervention of Save Our Unique Lands, Inc. is GRANTED.
5. The Petition for Intervention of World Organization for Landowner Freedom is GRANTED.
6. The Petition for Intervention of Lake Superior Greens is GRANTED.
7. The Petition for Intervention of Dairyland Power Cooperative is GRANTED.
8. The Petition for Intervention of the Public Service Commission of Wisconsin is DENIED; however, PSC of Wisconsin is granted limited participation status to prefile testimony and to submit argument with respect to the issues of electrical system reliability and costs as it relates to the Minnesota portion of the Arrowhead Project. See, Minn. Rule Pt. 4400.1310. The prefiled testimony of PSC of Wisconsin is subject to cross-examination by any party to this matter. The limited participation status granted does not confer the right to cross-examine other witnesses.

9. The Petitions for Intervention of SOUL of Lake Superior, SOUL of Catawba-Keenan, SOUL of Rusk County, Pimicikamak Cree Nation, Concerned Minnesota Residents with Wisconsin Land Ownership, Rusk County Citizens Action Group, Citizens' Utility Board of Wisconsin, Chippewa Valley Bank, Exeland Rod and Gun Club, Exeland Business Owners Club, Village of Exeland, and Wisconsin State Representative Marty Reynolds are DENIED.
10. The scope of this exemption proceeding will be limited to impacts in Minnesota subject to the MEQB's jurisdiction. Wisconsin siting decisions and the Wisconsin impacts raised by many intervenors fall under the jurisdiction of the Wisconsin Public Service Commission. The Wisconsin docket is the appropriate forum for entities wishing to address environmental impacts within Wisconsin.

IT IS SO ORDERED.

Dated this \_\_\_\_ day of January, 2000

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PHYLLIS A. REHA  
Administrative Law Judge

### MEMORANDUM

Minnesota Rules Chapter 1405 are the procedural rules that apply to all proceedings under Minn. Stat. § 116C.51- 116C.69. These procedural rules were adopted for public hearings relating to the site and route designation process and to the route exemption process. They were designed to maximize citizen participation in these processes. The Chief Administrative Law Judge was responsible for the adoption of these procedural rules.<sup>[1]</sup> The rule part relating to Intervention is found at Minn. Rule, pt. 1405.0900 and provides the grounds for intervention as a party:

The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceedings, how those rights, duties, and privileges are not otherwise represented, and shall set forth the grounds and purposes for which intervention is sought and shall indicate petitioners' statutory or legal right to intervene, if one should exist.<sup>[2]</sup>

Upon a proper showing under this rule, a party is entitled to intervene. Part 1405.0900 does not have the same requirement for intervention as a party to a contested case hearing conducted under Minn. Rules Chapter 1400. Minn. Rules, pt 1400.6200 provides as one of its grounds that the petitioner be directly affected by the outcome of the proceeding.<sup>[3]</sup> The absence of the "directly

affected by the outcome" standard indicates that the Intervention rules under the Power Plant Siting Act was designed to encourage inclusion rather than exclusion. The Act also contemplated broad citizen participation, by specifically stating that "the rules shall attempt to maximize citizen participation in these processes."<sup>[4]</sup> However, maximizing citizen participation does not mean expanding the hearing to consider issues over which the agency has no jurisdiction.

Under the Power Plant Siting Act, MEQB's authority extends to "environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources *of the state*."<sup>[5]</sup> The MEQB is empowered to review petitions by utilities "in this state"<sup>[6]</sup> for routes designated by utilities.<sup>[7]</sup> Moreover, only Minnesota State agencies are bound by the Board's decisions.<sup>[8]</sup> It is clear that the Legislature did not intend to make decisions that attempt to regulate impacts in other states or nations.<sup>[9]</sup> The purpose of the Power Plant Siting Act and the rules implementing it are to ensure an orderly process to adjudicate issues over which the MEQB has jurisdiction. It is not appropriate therefore to allow intervention of persons or organizations that wish to raise only Wisconsin impacts, Cree Nation impacts or impacts in Manitoba, Canada. These issues go far beyond the MEQB's lawful jurisdiction. With respect to Wisconsin concerns, relief should be requested before the Wisconsin Public Service Commission that has authority over the issues they raise.

The ALJ recognizes that the 12-mile segment of a much larger project cannot be analyzed in a vacuum with respect to its potential for human and environmental harm within the State of Minnesota. The statute and rules applicable to this matter allows a consideration of human and environmental impacts as set forth in Minn. Rules, pt. 4400.1310 set forth broad issues to be considered to facilitate the evaluation and designation of HVTL routes and route segments.<sup>[10]</sup> These same issues are outlined in the Notice of Hearing.<sup>[11]</sup> After a consideration of these issues, the Board then must determine that the proposed high voltage transmission line will not create significant human or environmental impact. Then, and only then, may the Board exempt the proposed transmission line from the route designation and construction permit requirements for high voltage transmission lines. If the exemption is granted, Minnesota Power must still comply with any applicable state rule and any zoning, building and land use rules, regulations and ordinances of any regional, county, local and special purpose government in which the proposed facilities will be located.<sup>[12]</sup>

### **Minnesota Department of Commerce**

The Department seeks to intervene because the decision reached in this case will affect the interests of Minnesota electric ratepayers. The Department advocates for the general Minnesota public in energy and telecommunication

matters before the Public Utilities Commission and is the State's lead energy policy agency. Its petition has been granted because the proposed transmission line project involves expenditures of ratepayer funds and encompasses issues concerning the future reliability and efficiency of Minnesota's transmission system.

### **North American Water Office**

NAWO's is an organization that has had a long history of involvement in many electric utility proceedings. It intends to address the human and environmental impacts created by the proposed project that it believes will adversely affect certain public interests. Its petition has been granted because it will address issues identified in the Notice of Public Hearing in this matter. It will be limited to addressing impacts within the State of Minnesota.

### **Clean Water Action Alliance**

CWAA's petition has been granted because it is an organization of 35,000 members, many of whom are located in Minnesota. CWAA works to protect the health of Minnesota citizens and the environment with a focus on pollution resulting from energy generation and on alternatives to existing generation and transmission infrastructures. Its participation will be limited to Minnesota impacts. (CWAA may wish to consider consolidating its intervention with NAWO as their missions appear to be similar).

### **Dairyland Power Cooperative**

Dairyland's petition has been granted because it is owned by and provides the wholesale power requirements for three distribution cooperatives in Minnesota accounting for approximately 30,900 members. Dairyland also provides wholesale power requirements for a municipal utility in Minnesota. It owns 981 MW and nearly 3200 miles of transmission line with approximately 570 in Minnesota. It routinely engages in power and energy transactions with other MAPP members. Dairyland is a potential user of the proposed facilities, and has an interest in the outcome of this proceeding.

### **Lake Superior Greens**

Lake Superior Greens' petition has been granted because its focus is the protection of Lake Superior and its watershed that includes portions of Minnesota. It has a 1991 Agreement to restore and Protect Lake Superior that was signed by states bordering the shores of Lake Superior, including the state of Minnesota. Any other party will not adequately represent its interests.

### **SOUL, Inc.**

SOUL, Inc.'s Petition has been granted because, although incorporated in Wisconsin, it purports to have membership of citizens of both Wisconsin and Minnesota who have formed a grassroots organization in the interest of seeking alternatives to the proposed project in its entirety, including the Minnesota 12 mile segment. Their intervention will be limited to Minnesota impacts as discussed in the previous section of this Order. Its individual chapters have been denied intervenor status because they represent purely local Wisconsin interests as set forth in their petitions. Furthermore, SOUL, Inc. has stated that consolidation of any individual chapters of SOUL in the MEQB proceedings would be appropriate.<sup>[13]</sup> The ALJ has not ordered consolidation of the local chapters due to the limitations of their interests to Wisconsin only concerns. The local chapters should seek relief in Wisconsin before a body that has authority over the issues they raise.

### **World Organization for Landowners Freedom**

WOLF is an organization whose primary concern is land use. In its Reply to Objections to Petitions for Intervention it claims to represent the interests of landowners along the Minnesota portion of the Arrowhead Project. Assuming this to be true, it is granted party status; but its intervention will be limited to land use issues within the state of Minnesota.

### **Wisconsin Public Service Commission**

Wisconsin PSC has been denied full party status in this Minnesota proceeding, but has been granted limited participation to address issues related to electrical system reliability and cost, because those same issues are appropriate for consideration by the MEQB with respect to Minnesota Power's application for Exemption. Minn. Rule pt. 4400.1310 identifies these issues as appropriate for consideration. These issues have also been identified in the Notice of Public Hearing. Other purely Wisconsin interests can be addressed in the Wisconsin PSC's own proceeding.

### **Petition Denials**

All the other Petitions have been denied because they state primarily Wisconsin or non-Minnesota interests and their concerns would be outside the jurisdiction of the MEQB. Furthermore their interests can be represented in other forums. Those with Wisconsin interests can seek relief in Wisconsin before the Wisconsin PSC that has authority over the issues they raise.

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<sup>[1]</sup> Minn. Stat. § 116C.66.

<sup>[2]</sup> Minn. Rule, Part 1405.0900, Subpart 1.

<sup>[3]</sup> See, Minn. Rule, Part 1400.6200.

<sup>[4]</sup> Minn.Stat. § 116C.66.

<sup>[5]</sup> Minn. Stat. § 116C.57, subd. 4(2) (emphasis added).

<sup>[6]</sup> Minn. Stat. § 116C.52, subd. 10.

<sup>[7]</sup> Id. at subd. 2.

<sup>[8]</sup> Minn. Stat. § 116C.61.

<sup>[9]</sup> See, Minnesota Power Objections to Petitions to Intervene, pg. 3.

<sup>[10]</sup> Minn. Rule Part 44.1310, Subpart 1.

<sup>[11]</sup> Notice of Public Hearing, pg. 3.

<sup>[12]</sup> Minn. Stat. §116C.57, subd. D.

<sup>[13]</sup> See Petition, pg. 2.